

MONTANA LEGISLATIVE HISTORY

Chapter 212 1991

Bill H B 779 S _____ Original bill & history ✓ c

H. Committee on Business & Econ Dev S. Committee on Business & Industry

Hearing Date(s) 2/19 _____ c Hearing Date(s) 3/08 _____ c

2/19 _____ c 3/08 _____ c

_____ c _____ c

_____ c _____ c

Date Out _____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

4/20 SIGNED BY PRESIDENT
 4/20 TRANSMITTED TO GOVERNOR
 4/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 609

EFFECTIVE DATE: 3/01/92

HB 779 INTRODUCED BY CROMLEY, ET AL.

LIMIT BANKRUPTCY STAYS OF FORECLOSURES
 UNDER SMALL TRACT FINANCING ACT

2/12	INTRODUCED		
2/12	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/13	FIRST READING		
2/19	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	93	5

	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO BUSINESS & INDUSTRY		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	48	0

	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 212		

EFFECTIVE DATE: 10/01/91

HB 780 INTRODUCED BY PAVLOVICH, ET AL.

ALLOW HIV-RELATED TESTING OF PERSONS
 CHARGED WITH SEXUAL OFFENSES

2/12	INTRODUCED		
2/12	REFERRED TO HUMAN SERVICES & AGING		
2/13	FIRST READING		
2/18	HEARING		
2/22	TABLED IN COMMITTEE		

HB 781 INTRODUCED BY KIMBERLEY, ET AL.

ALLOW DEPARTMENT OF HEALTH TO ADOPT RULES
 FOR AIR QUALITY PERMIT FEES

BY REQUEST OF DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL SCIENCES

2/12	INTRODUCED		
2/12	REFERRED TO TAXATION		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/13	HEARING		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/01	2ND READING PASSED	88	9
4/03	3RD READING PASSED	84	15

	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO NATURAL RESOURCES		
4/09	REFERRED TO TAXATION		
4/11	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/16	2ND READING CONCURRED	49	0

HOUSE BILL NO. 779

INTRODUCED BY CROMLEY, MERCER, TOOLE, BENEDICT

IN THE HOUSE

FEBRUARY 12, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 13, 1991	FIRST READING.
FEBRUARY 19, 1991	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 20, 1991	PRINTING REPORT.
FEBRUARY 21, 1991	POSTED ON ALTERNATE CONSENT CALENDAR.
FEBRUARY 23, 1991	THIRD READING, PASSED. AYES, 93; NOES, 5.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 25, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 8, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1991	SECOND READING, CONCURRED IN.
MARCH 14, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *779*
2 INTRODUCED BY *Carol Mercer Toth Benedict*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL
5 TRACT FINANCING ACT OF MONTANA; PROVIDING A LIMITATION ON
6 THE TIME THAT NONJUDICIAL FORECLOSURES MAY BE DELAYED BY THE
7 INTERVENTION OF STAYS; AND AMENDING SECTION 71-1-315, MCA."
8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10 **Section 1.** Section 71-1-315, MCA, is amended to read:
11 "71-1-315. Notice -- sale -- payment. A trust deed may
12 be foreclosed by advertisement and sale in the manner
13 hereinafter provided:
14 (1) The trustee shall give notice of the sale in the
15 following manner:
16 (a) At least 120 days before the date fixed for the
17 trustee's sale, a copy of the recorded notice of sale shall
18 be mailed by registered or certified mail to:
19 (i) the grantor, at the grantor's address as set forth
20 in the trust indenture or (in the event no address of the
21 grantor is set forth in the trust indenture) at the
22 grantor's last known address;
23 (ii) each person designated in the trust indenture to
24 receive notice of sale whose address is set forth therein,
25 at such address;

1 (iii) each person who has filed for record a request for
2 a copy of notice of sale within the time and in the manner
3 hereinafter provided, at the address of such person as set
4 forth in such request;
5 (iv) any successor in interest to the grantor whose
6 interest and address appear of record at the filing date and
7 time of the notice of sale, at such address;
8 (v) any person having a lien or interest subsequent to
9 the interest of the trustee and whose lien or interest and
10 address appear of record at the filing date and time of the
11 notice of sale, at such address.
12 (b) At least 20 days before the date fixed for the
13 trustee's sale, a copy of the recorded notice of sale shall
14 be posted in some conspicuous place on the property to be
15 sold. Upon request of the trustee, the notice of sale shall
16 be posted by a sheriff or constable of the county wherein
17 the property to be sold is located.
18 (c) A copy of the notice of sale shall be published in
19 a newspaper of general circulation published in any county
20 in which the property or some part thereof is situated, at
21 least once each week for 3 successive weeks. If there is no
22 such newspaper, then copies of the notice of sale shall be
23 posted in at least three public places in each county in
24 which the property or some part thereof is situated. The
25 posting or the last publication shall be made at least 20

1 days before the date fixed for the trustee's sale.

2 (2) On or before the date of sale, there shall be
3 recorded in the office of the clerk and recorder of each
4 county where the property or some part thereof is situated,
5 affidavits of mailing, posting, and publication showing
6 compliance with the requirements of this section.

7 (3) On the date and at the time and place designated in
8 the notice of sale, the trustee or his attorney shall sell
9 the property at public auction to the highest bidder. The
10 property may be sold in one parcel or in separate parcels,
11 and any person, including the beneficiary under the trust
12 indenture but excluding the trustee, may bid at the sale.
13 The person making the sale may, for any cause he deems
14 expedient, postpone the sale for a period not exceeding 15
15 days by public proclamation at the time and place fixed in
16 the notice of sale. No other notice of the postponed sale
17 need be given. In the event a sale cannot be held at the
18 scheduled time by reason of the automatic stay provision of
19 the United States Bankruptcy Code, 11 U.S.C. 362, or of a
20 stay order issued by any court of competent jurisdiction,
21 the person making the sale may, as often as he considers
22 expedient, postpone the sale. Each postponement may not
23 exceed 30 days, and all postponements, in the aggregate, may
24 not exceed 120 days. Each postponement must be effected by a
25 public proclamation at the time and place fixed in the

1 notice of sale or fixed by previous postponement. No other
2 notice of the postponed sale need be given.

3 (4) The purchaser at the sale shall pay the price bid
4 in cash, and upon receipt of payment, the trustee shall
5 execute and deliver a trustee's deed to the purchaser. In
6 the event the purchaser refuses to pay the purchase price,
7 the person conducting the sale shall have the right to
8 resell the property at any time to the highest bidder. The
9 party refusing to pay shall be liable for any loss
10 occasioned thereby, and the person making the sale may also,
11 in his discretion, thereafter reject any other bid of such
12 person."

-End-

CHAIRMAN--BOB BACHINI

NORMAL SCHEDULE==> SITE: ROOM 312-3

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY-JO LAHTI

--BILL NO--	--REFER DATE--	--HEARING DATE--	--CONSIDERATION DATES--	-----COMMITTEE ACTION-----	--REREFERRED TO COMM--	DATE OUT-
HB0748	2/11	2/20		TABLED ON 02/20		
KADAS, MIKE			MOBILE HOME PARK OPERATOR-RESIDENT ACT			
HB0771	2/12				AGRICULTURE	
FOSTER, MIKE			REVISE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT			
HB0774	2/12	2/21		PASS AS AMENDED		2/22
JOHNSON, ROYAL			ALLOW SPECIFIED LICENSEES TO IMPORT ILLEGAL GAMBLING DEVICES			
HB0776	2/12	2/19		DO PASS		2/19
BERGSAGEL, ERNEST			REVISE SALE PROCEDURE FOR UNCLAIMED PROPERTY HELD IN STORAGE			
HB0779	2/12	2/19		DO PASS		2/19
CROMLEY, BRENT			LIMIT BANKRUPTCY STAYS OF FORECLOSURES UNDER SMALL TRACT FINANCING ACT			
HB0782	2/12	2/22		PASS AS AMENDED		2/22
HANSEN, STELLA			CLARIFY REQUIREMENTS OF THE MONTANA JUNK VEHICLE PROGRAM			
HB0795	2/12	3/15		PASS AS AMENDED	APPROPRIATIONS	3/23
HARPER, HAL			CREATE THE MONTANA COMMUNITY INFRASTRUCTURE ACT			
HB0811	2/13	2/22		TABLED ON 02/22		
MENAHAN, RED			AMEND PROVISIONS ON WHO MAY SELL ANTIQUE SLOT MACHINES			
HB0816	2/13	2/19		PASS AS AMENDED		2/20
HARRINGTON, DAN			MAKE RECREATIONAL VEHICLES SUBJECT TO PROVISIONS OF AUTOMOBILE LEMON LAW			
HB0819	2/13	2/20		PASS AS AMENDED		2/20
RUSSELL, ANGELA			PROMOTE STATE-TRIBAL COOPERATION IN ECONOMIC DEVELOPMENT AND TOURISM			
HB0827	2/13	3/06		PASS AS AMENDED	APPROPRIATIONS	3/07
HARPER, HAL			APPROPRIATE MONEY FOR CERTIFIED COMMUNITIES PROGRAM			

6

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on February 19,
1991, at 7:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Steppler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: Executive Action on HB 196, HB 477, HB
686 (Tabled), HJR 27, HB 779, HB 816. Hearings on HB 655,
HB 776, HB 816, HB 779, HJR 27.

EXECUTIVE ACTION ON HOUSE BILL 196

Motion: REP. KILPATRICK moved HB 196 DO PASS. He also moved
amendments dated February 19, 1991, be adopted.

Discussion:

REP. RICE said this will not be the final amendment. There will
be other amendments. We wanted to get Appropriations on it so we
would have some time after transmittal for further discussion.

bout one of these five-year guarantees on a car. In the meantime that dealer no longer carried that brand of car and he said he wouldn't take care of that. You buy an extended warranty and so they are no longer responsible. He wouldn't want to take the dealer completely off the hook. Make sure the person who sells the car is liable.

REP. DOWELL said in looking over the law there were three exclusions, one was for motor homes, another for trucks 10,000 GVW or greater and a third for motorcycles. Has anything been done on the other two areas except for motor homes? REP.

HARRINGTON said RV vehicles are the only ones who have contacted him.

REP. ELLIS said the motor home puts in the most value. The manufacturer of that should be the responsible person. Are you looking for problems in the chassis or the whole unit? REP.

HARRINGTON is talking about the basic vehicle itself.

REP. STELLA JEAN HANSEN thought it is up to the manufacturer of that RV vehicle to replace it. REP. HARRINGTON said the manufacturer should be liable, but the person who sold that vehicle should be liable. He should have to work with the manufacturer. The dealer should work with the buyer back to the manufacturer.

Closing by Sponsor:

REP. HARRINGTON closed saying the bill could be amended to make it better if so desired.

HEARING ON HOUSE BILL 779

REP. BRENT CROMLEY, explained HB 779 is an Act revising the Small Tract Financing Act of Montana; providing a limitation on the time that nonjudicial foreclosures may be delayed by the intervention of stays; and amending Section 71-1-315, MCA. In 1963 the Montana Legislature passed a Small Tract Financing Act that basically gave an alternative to financing homes. It deals with smaller tracts of land, originally 15 acres or less; it is now 30 acres or less. It is an alternative means of financing the mortgage. The original way of financing was the mortgage and if there was a default on the mortgage, the lender would go to court, bring a suit to collect the money, take the house back and collect a deficiency judgment.

The Small Tract Financing act has a different means of enforcing a foreclosure. There is a 120 day period in which notice is given. Notice is given in three ways: by certified mail return receipt signed by the lender and all the other parties interested, posting in various places in the county and on the residence, and by publishing in the newspaper. All of this process has to give the owner of the home at least a 120 day notice. The advantage to the lender of going to the Small Tract

Financing Act and using a trust indenture is that the period of foreclosure is shortened. There is no period of redemption. In a mortgage, there is a one year right of redemption. In a trust indenture, there is no right of redemption. Those are the advantages to the bank or the lender. The advantages to the purchaser is that there is no deficiency judgement. If the homeowner is not able to pay and there is foreclosure, the homeowner will never have to pay the deficiency judgement. They will never owe more than what is owed on the home.

If during this 120 day period, the homeowner should file for bankruptcy there is immediately an automatic stay by the bankruptcy court which just says everything involved in judicial proceedings, whatever it is, are stayed. Normally what happens is during that period there will immediately be a request of the bankruptcy court to remove the home from the bankruptcy and take the automatic state provisions out of that and go ahead with the sale at the end of the 120 day period. Many times it is not possible to get that automatic stay lifted in time. So if it goes beyond the original sale date, the lender has to start over again. This has an obvious disadvantage to the lender because they are going to start over and that will extend the period. It also has disadvantages to the home owner in the event they do redeem the home because the charges for the notice are doubled. Those charges include certified postage fees, publishing fees, attorney's fees that are built into the statute, and those can be doubled if that stay cannot be lifted within the 120 day period. It has been an uncertainty exactly what is supposed to happen during that 120 day period anyway in the event of a bankruptcy. This statute on Page 3 of HB 779 adds new language to the existing statutes. Previously at the end of the 120 day period the person making this sale, which may be a title company, it may be a lawyer, a bank, has a public sale, usually at the courthouse or somebody's place of business. They presently can, by public proclamation extend the sale for up to 15 days which is usually not adequate if they are talking about a bankruptcy situation. Either the stay has been lifted or it has not been.

HB 779 is designed to allow a greater period of time for extension of the original time period. It provides that at the original time of sale, the person making the sale by public proclamation can extend the sale for up to 30 days. It allows for that to be done four times, for a total of 120 days. The purpose again is to try to have the automatic stay from the particular home or property lifted so it can be sold. If it cannot be done within the 240 day period, that is all the further the statute goes. They would just have to start over after the automatic stay is lifted. This is an attempt to deal with that subject. Another advantage is up to the day of sale, the homeowner can bring the loan current just by paying back the past due payments and the cost of sale. If they have had to go through the sale two or three times those costs again could be substantial. This bill would make it easier to redeem the sale, if that is a possibility.

Proponents:

Gene Phillips, Kalispell, appeared on behalf of the Montana Land Title Association which is an association of all the land title associations in the State. They strongly support this legislation. It is beneficial for both the lender and the borrower. It will reduce the amount of costs incurred by the borrower in the event the sale had to be noticed a second time. It also facilitates and clears up the ambiguities that are presently existing in statute on whether or not and for how long you can postpone a sale by simply an announcement of a time and place of sale. He presented to the Committee copies of letter faxed to him this morning from two different law firms very much involved in doing these foreclosure actions who support passage of HB 779. EXHIBITS 7 and 8.

Jock Anderson, Montana League of Savings Institutions, supports this bill. The Land Title companies should be commended for contacting the attorneys in the State, members of the legal profession that work in this area. There has been input from all over and there have been many changes in this bill as it evolved. It addresses a problem that has existed for some time. A solution to the problem has been worked on from several different areas, but the title companies have come forward with it and they support it. One point is worth noting and that is this bill has put non-judicial foreclosures in the same status as all other types of actions, judicial or otherwise. It allows the proceeding to pick up where it left off when a bankruptcy is concluded.

Bill Leary, representing the Montana Banker's Association, appeared in support of HB 779. It is a well written bill, easy to understand, and they hoped this Committee would vote it out with an unanimous Do Pass recommendation.

Bob Pyfer, Vice President of the Montana Credit Unions League, feels HB 779 is beneficial to both lenders and borrowers and urged the Committee's support.

Opponents: None.

Questions from the Committee: None.

Closing by the Sponsor:

REP. CROMLEY closed.

HEARING ON HOUSE JOINT RESOLUTION 27

REP. SHEILA RICE took the Chair.

Presentation and Opening Statement by Sponsor:

REP. BOB BACHINI, HD , Havre, explained this Resolution was

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 19, 1991

Page 23 of 24

discussed and requested by the House Business and Economic Development Committee. It is a Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that no unnecessary fee, charge, or restriction be imposed that would impede passage across the International boundary between the United States and Canada. EXHIBIT 9.

There were no Proponents, no Opponents, and no Questions from the Committee.

EXECUTIVE ACTION ON HJR 27

Motion/Vote: REP. STELLA JEAN HANSEN moved HJR 27 DO PASS.
Motion was unanimously adopted. REP SONNY HANSON was absent.

REP. BOB BACHINI resumed Chairmanship.

EXECUTIVE ACTION ON HOUSE BILL 779

Motion: REP. CROMLEY moved HB 779 DO PASS.

Discussion:

REP. SCOTT spoke in opposition to HB 779. It would be a burden on the person facing foreclosure on his home or business. A lender could sell the property and obtain a deficiency judgment. Their wages could be garnisheed for many years. A debtor could never recover under this bill.

REP. CROMLEY explained under this Small Tract Financing Act there can never be a deficiency judgment if his home is financed through this Trust Indenture. This doesn't give the lender any control over the bankruptcy court. This is something separate, they have to apply to the court to get that stay lifted. The court decides whether the stay should be lifted. The stay won't be lifted in 120 days. This will address the situation when the principle asset is the home. If the home can be taken out of the bankruptcy, that is up to the bankruptcy judge. As far as a deficiency judgment, there could never be a deficiency judgment on a Small Tract Financed mortgage.

REP. SCOTT asked who takes the loss of the home is sold at a loss. REP. CROMLEY stated the bank or credit union takes the loss. If the home sold for \$80,000 and was appraised at \$60,000, the lender will bid in the amount of the loan. If they are bidding in the property, in the law they cannot get a deficiency. Under the Small Tract Financing Act it was always assumed that they could not get a deficiency judgment on a home.

REP. STELLA JEAN HANSEN asked if before 240 days in a bankruptcy court the home cannot be sold. REP. CROMLEY said normally it takes 120 days plus notice time. If in that 120-day period the borrower files for bankruptcy, the home cannot be taken away. The borrower can still live in the home and they may be able to bring

HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

February 19, 1991

Page 24 of 24

the loan current on the home. They would just have to pay the back payments and the fees incurred. A couple of notices staying the sale can run \$400 to \$600.

REP. STELLA JEAN HANSEN asked if there are any homes financed this way. REP. CROMLEY stated most of them are.

REP. WALLIN thought most homes are financed through a federal mortgage where they could sue for a deficiency judgment. Most of them are Trust Indentures now. Is there a dollar amount restriction? REP. CROMLEY a federal mortgage loan usually means on personal property. A real estate mortgage, especially in commercial where a bank is concerned about repayment, they may want to make sure they are protected and want to go after a deficiency judgment in which case this would not apply. There are a lot of advantages to the lender and the borrower, and this is designed to give a little more time to that Notice of Sale. A person can go into bankruptcy and get the stay lifted. Bankruptcy courts are slow and it may go on past the 120 day period. They are just completing the sale.

Vote: Motion HB 779 DO PASS was adopted with REP SCOTT voting NO. REP. SONNY HANSON was absent.

EXECUTIVE ACTION ON HB 816

Motion/Vote: REP. PAVLOVICH moved HB 816 DO PASS. He also moved REP. LARSON amendments in concept be adopted. Amendments were adopted. REP. PAVLOVICH moved a motion HB 816 DO PASS AS AMENDED which passed unanimously with REP. SONNY HANSON absent.

ADJOURNMENT

Adjournment: 11:30 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, SECRETARY

BB/j1

BU021991.HM1

HOUSE STANDING COMMITTEE REPORT

February 19, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 779 (first reading copy -- white) do pass .

Signed: Bob Bachini
Bob Bachini, Chairman

Exhibit 7

2-19-91

HB 779

L. V. HARRIS
COUNSELTELECOPIER
(406) 443-7022DAVID L. JACKSON
ROBERT M. MURDO
JOHN H. GRANT
JAMES H. McFARLAND
J. MARK STANLEY

JACKSON, MURDO & GRANT, P.C.

ATTORNEYS AT LAW
203 NORTH EWING STREET
HELENA, MONTANA 59601-4298
TELEPHONE (406) 442-1300

February 18, 1991

Mr. Ted Lovec
American Title & Escrow
Suite 21, Alpine Village North
1216 16th Street West
Billings, MT. 59102-4198

Re: HB # 779

Dear Ted:

Thank you for the copy of HB #779. I strongly support it.

I support it because it reduces time delays and therefore expenses in the foreclosure process without denying borrowers any legitimate opportunity to save their homes from foreclosure.

Our law firm represents many individuals who are forced to file bankruptcy because of unfortunate financial circumstances which are usually beyond their control. We also represent lenders which sometimes must foreclose mortgages and trust indentures.

In the case of a chapter 7 liquidation (sometimes referred to as a straight bankruptcy) the debtor (bankrupt) is relieved of all of his or her debts and surrenders all collateral. Alternatively, a debtor may retain property which is collateral, but must pay for it according to the terms of the note which was given when the obligation was incurred.

The most common financing tool in Montana is a Trust Indenture. The trust indenture has almost totally replaced the more well known mortgage. In order to foreclose a trust indenture, a 120 day notice is given to the borrower that the property will be sold on a certain date. This notice is seldom if ever given before the borrower is at least 90 days behind in payments. At any time prior to the trust indenture foreclosure sale the borrower needs only to come up with all past due payments (plus foreclosure costs and attorneys fees) in order to stop the foreclosure. Thus, the borrower has approximately 210 days from the time he or she first misses a payment before the foreclosure is completed.

If there is a bankruptcy filed in the middle of the foreclosure process, the automatic stay (11 USC section 362) which prevents collection activity, including foreclosures, takes effect and will require that the foreclosure be cancelled. The foreclosure will not be able to begin again until the automatic stay is

Ex. 7

2-19-91

HB 779

released. Once the stay is released a new foreclosure will be commenced. Thus, instead of the normal 210 days from the first missed payment to foreclosure, it will be considerably longer.

I do not recall one case in the 12 years since the Bankruptcy Reform Act of 1978, where the borrower has filed bankruptcy, stopped a foreclosure sale, had a new foreclosure notice given and then brought the delinquent mortgage payments current. I can, however, tell you about a number of borrowers who, in my opinion abused the bankruptcy process. Shortly before a scheduled sale the borrower filed bankruptcy and stopped a scheduled foreclosure sale. The lender was then required to lift the stay and notice up another foreclosure sale. The borrower remained on the mortgaged property while the second notice period ran its course. The borrower thus was able to stay on the property for one year or more without ever making a payment on the mortgage.

In most cases the people filing bankruptcy either have made arrangements prior to filing to maintain payments during the bankruptcy, to bring payments current during or after the bankruptcy, to surrender the property, or have simply abandoned the property. In the cases where the property is surrendered or abandoned a foreclosure may be required because of title problems. If the automatic stay halts a foreclosure on surrendered or abandoned property it does not help the borrower and ends up costing the lender more time and money.

I do not recall having been involved, either on the debtor's or the lender's side, in a straight bankruptcy where the primary reason the bankruptcy was filed was related to a mortgage debt. As discussed above, the borrower must still pay for collateralized debt in bankruptcy in order to keep the property. Thus even if the borrower files bankruptcy he or she still must pay the mortgage. If a foreclosure was stopped by the automatic stay and then restarted after the stay was released, there would simply be more payments that the borrower would have to come up with in order to stop the foreclosure.

It is important to note that lifting the automatic stay is not necessarily a simple act. It requires a motion in the bankruptcy court. In order to be successful on this motion the lender must show that there is no equity in the property. The bankruptcy court will protect borrowers from over zealous lenders taking advantage of borrowers who have temporary financial reverses.

It is my opinion that HB # 779 simply reduces the expenses and time delays when a lender is in the unfortunate position of being required to foreclose a mortgage debt and a bankruptcy is filed. It does not take away any of the rights of borrowers who have

EX. 7

2-19-91

HB 779

suffered temporary financial setbacks.

Very truly yours,

John H. Grant

HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
WASHINGTON, D.C.

SUITE 1400
175 NORTH 27TH STREET
BILLINGS, MONTANA 59101

TELEPHONE (406) 252-2166
TELECOPIER (406) 252-1669

David R. Chisholm

February 18, 1991

Ted A. Lovec
American Title & Escrow
1216 - 16th Street West
Billings, MT 59102

Re: House Bill No. 779

Dear Ted:

Thank you for the copy of House Bill No. 779 modifying the Montana Small Tract Financing Act. As you know, our firm represents lenders holding mortgages and trust indentures in Montana and customarily use title companies to assist us in conducting trustee's sales for trust indentures under the Act.

A continuing difficulty with the Act is the ambiguity in the postponement sections, including whether multiple postponements aggregating more than 15 days are allowed when a debtor files bankruptcy. It is becoming more common for debtors to file bankruptcy on the eve of trustee sale. In several recent instances, the bankruptcies were filed solely for the purpose of avoiding the trustee sale. The bankruptcies were not subsequently pursued under the bankruptcy code and rules. Under the current postponement provisions, a question repeatedly arises whether multiple postponements of the trustee's sale are allowed under Montana law. In the case of the bankruptcies mentioned above, the debtors intended to use the ambiguity in the Act to cause a several month delay in foreclosure of the property.

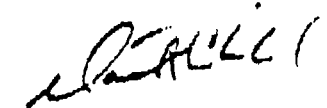
I believe House Bill No. 779 goes a long way towards resolving the ambiguity and will provide Montana lenders with clear rules for postponing trustee's sales in the bankruptcy context.

Ted A. Lovec
American Title & Escrow
February 18, 1991
Page 2

As you know, other portions of the postponement provisions are ambiguous and should be considered by legislature. I hope the legislature will enact House Bill No. 779.

Please feel free to provide this letter to state legislators if you deem it appropriate.

Sincerely,



DAVID R. CHISHOLM

DRC/ss

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

BILL NO. HB 816 & HB 779

DATE FEBRUARY 19, 1991 SPONSOR (REP. DAN HARRINGTON, REP. CROMLEY

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
JOCK ANDERSON	MT. League of Sav. Inst.	779		X
GENE PHILLIPS	MT. LAND TITLE Assoc.	779		X
Bill LEARY	MT. Bankers Assoc.	779		X
Stuart Dwyer	MT. Manufacturers Assoc.	816		
Bob Pyper	MT. Credit Union League	779		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SECRETARY-DARA ANDERSON

BILL NO.	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0774	2/26	3/13		CONCUR		3/13
JOHNSON, ROYAL			ALLOW SPECIFIED LICENSEES TO IMPORT ILLEGAL GAMBLING DEVICES			
HB0779	2/25	3/08		CONCUR		3/08
CROMLEY, BRENT			LIMIT BANKRUPTCY STAYS OF FORECLOSURES UNDER SMALL TRACT FINANCING ACT			
HB0782	2/26	3/11		CONCUR AS AMENDED		3/11
HANSEN, STELLA			CLARIFY REQUIREMENTS OF THE MONTANA JUNK VEHICLE PROGRAM			
HB0816	2/25	3/08		CONCUR AS AMENDED		3/13
HARRINGTON, DAN			MAKE RECREATIONAL VEHICLES SUBJECT TO PROVISIONS OF AUTOMOBILE LEMON LAW			
HB0819	2/26	3/11		CONCUR AS AMENDED		3/11
RUSSELL, ANGELA			PROMOTE STATE-TRIBAL COOPERATION IN ECONOMIC DEVELOPMENT AND TOURISM			
HB0853	2/27	3/14		CONCUR AS AMENDED		3/18
SCOTT, JOHN			REVISE PORT AUTHORITY LAWS			
HB0854	2/26	3/11		CONCUR		3/11
FOSTER, MIKE			INSURANCE FUNDING FOR LONG-TERM CARE THROUGH LIFE INSURANCE PRODUCTS			
HB0863	2/26	3/11		CONCUR AS AMENDED		3/12
BROWN, DAVE			AUTHORIZING TAX CREDITS FOR SMALL BUSINESS INVESTMENT COMPANY			
HB0987	3/26	4/02		CONCUR AS AMENDED		4/02
CROMLEY, BRENT			GENERALLY REVISE THE LAW RELATING TO REGULATION OF PUBLIC ACCOMMODATIONS			
HB0988	3/26	4/02		CONCUR AS AMENDED		4/02
CROMLEY, BRENT			GENERALLY REVISE LAWS REGULATING CAMPGROUNDS, TRAILER COURTS, AND WORK CAMPS			
HB0995	4/09	4/12		CONCUR		4/12
HARPER, HAL			WORKERS' COMPENSATION BONDS ISSUED TO PAY UNFUNDED LIABILITY			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on March 8, 1991, at
10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON HOUSE BILL 76

Presentation and Opening Statement by Sponsor:

Representative Bud Gould, sponsor of the bill, stated that this bill is a very fair and equitable bill. The house business committee put the bill into a subcommittee, and there were a lot of changes that were made by this subcommittee and adopted by the full committee. The changes made should satisfy both sides. This bill takes in having two distributors in an area, and how they will be fairly treated. It is fair to the wineries, it should make them feel that they have people in the state of Montana that want to do business with them, and want to stay in business with them.

Proponents' Testimony:

Representative Bob Pavlovich stated that he worked on the subcommittee on this bill in the house. This bill has been floating back and forth since 1981. This year we have come up

Joseph Schrage replied no.

Senator Lynch asked if Representative Harrington had any objections to the amendments.

Representative Harrington replied that the problem he has is the fixtures, etc. should be included. Thirty thousand dollars of the sixty four thousand dollars would be the fixtures. They should be covered in the lemon law.

Senator Williams stated that there should be separate warranties for different fixtures.

Closing by Sponsor:

Representative Harrington closed by saying that he will try to amend the bill. It is important for people to know that they can come to Helena.

HEARING ON HOUSE BILL 779

Presentation and Opening Statement by Sponsor:

Representative Brent Cromley, sponsor of the bill, stated that this is a fair bill. Trust indentures, since 1963 have been used as an alternate financing vehicles by lenders and buyers. The trust indentures have advantages to both the lenders and the buyers. The lender, if a foreclosure is required, there is a notice that is given to the homeowner through publication at home. There is a period of one hundred and twenty days, which must elapse before the sale takes place. The advantage to the buyer is that once the process goes through the sale, there can be no deficiency judgement in the state of Montana. This bill comes from a problem when the homeowner or purchaser files for bankruptcy, sometimes during this one hundred and twenty day period. The intent of this bill is to extend the period of time for the original sale in order to avoid the duplication of the original costs and the original notices that have gone out. This bill would allow the trustee at the time that the original scheduled sale, to extend the period of thirty days beyond the original date of sale. This can be done a maximum of four times.

Proponents' Testimony:

Gene Philips, representing the Montana land title association, Jock Anderson, and the first interstate bank of Montana, stated that all of these entities support this bill.

Bill Leary, representing the Montana banker's association, stated that they support HB 779.

Bob Pyfer, vice president of the Montana credit union's league, stated that the bill will save costs and delays to all parties concerned.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Thayer asked if this bill changed anything on the deficiency judgements.

Representative Cromley replied no.

Closing by Sponsor:

Representative Cromley closed.

EXECUTIVE ACTION ON HOUSE BILL 779

Motion:

Senator Noble moved that HB 779 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

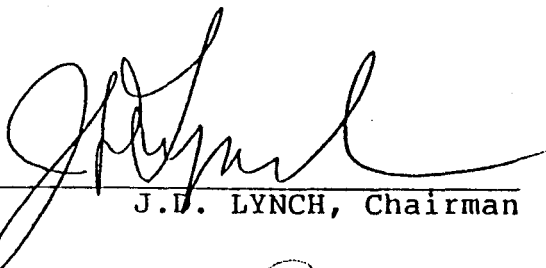
None

Recommendation and Vote:

The motion made that HB 779 be concurred in passed unanimously. Senator Kennedy will carry the bill to the floor.

ADJOURNMENT

Adjournment At: 11:45 a.m.


J.D. LYNCH, Chairman


DARA ANDERSON, Secretary

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE

3/8/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	X		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

25A

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Joseph C. Schrage	R.V. Lemon Law	HB 816	✓	
Robert W. Schrage	Lemon Law	HB 816	✓	
Mr and Mrs Frank Reinisch	R.V. Lemon Law	HB 816	✓	
EROME D. WINES	R.V. " "	HB 816		
2 Budd Gould	Sponsor	HB 76	✓	
Jack Haynie	City	HB 779	✓	
Bill Waskind	Beer & Wine Business	HB 76	✓	
DAVE Hewitt	Beer & Wine Dist.	HB 76	✓	
Ed BRANDT	Beer & Wine Dist	HB 76	✓	
Dale Markovich	Beer & Wine Dist	HB 76	✓	
Paul Rembe	MBWA	HB 76	✓	
Steve Seckey	Orig. Dist.	HB 76	✓	
Brian C. Clark	Beer & Wine Business	HB 76	✓	
Robert Zucconi	Beer & Wine Dist	HB 76	✓	
Liana Kaon	Dog Rescue	HB 76	—	—
GENE PHILLIPS	MT. LAND TITLE Assoc	HB 779	X	
Mona Jansson	WINE INSTITUTE	HB 76		X
Sydney Abrams	Wine Institute - Calif, Oregon & Wash	HB 76		✓
Don Brocopp	Intermountain Dist	HB 76	X	
Robert MacCoy	Horizon Lodge	HB 779	X	
Dave Lewis	Board of Investment	HB 779	X	
Steve Stanley	C.E.D Horizon Lodge	HB 779	X	
Bob Pyfer	MT Credit Unions League	779	X	

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/8/91 Bill No. 143779 Time 10 a.m.

NAME

YES

NO

SENATOR WILLIAMS

X

SENATOR THAYER

X

SENATOR NOBLE

X

SENATOR HAGER

X

SENATOR GAGE

X

SENATOR FRANKLIN

X

SENATOR BRUSKI

X

SENATOR KENNEDY

X

SENATOR LYNCH

X

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

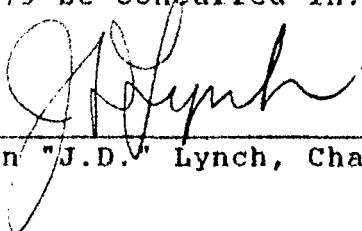
Motion: BE CONCURRED IN.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 8, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 779 (third reading copy -- blue), respectfully report that House Bill No. 779 be concurred in.

Signed: 

John "J.D." Lynch, Chairman

LB 3/8/91
Amd. Coord.

SB 3/8 1:25
Sec. of Senate

HOUSE BILL NO. 779

INTRODUCED BY CROMLEY, MERCER, TOOLE, BENEDICT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA; PROVIDING A LIMITATION ON THE TIME THAT NONJUDICIAL FORECLOSURES MAY BE DELAYED BY THE INTERVENTION OF STAYS; AND AMENDING SECTION 71-1-315, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice -- sale -- payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20

1 days before the date fixed for the trustee's sale.

2 (2) On or before the date of sale, there shall be
3 recorded in the office of the clerk and recorder of each
4 county where the property or some part thereof is situated,
5 affidavits of mailing, posting, and publication showing
6 compliance with the requirements of this section.

7 (3) On the date and at the time and place designated in
8 the notice of sale, the trustee or his attorney shall sell
9 the property at public auction to the highest bidder. The
10 property may be sold in one parcel or in separate parcels,
11 and any person, including the beneficiary under the trust
12 indenture but excluding the trustee, may bid at the sale.
13 The person making the sale may, for any cause he deems
14 expedient, postpone the sale for a period not exceeding 15
15 days by public proclamation at the time and place fixed in
16 the notice of sale. No other notice of the postponed sale
17 need be given. In the event a sale cannot be held at the
18 scheduled time by reason of the automatic stay provision of
19 the United States Bankruptcy Code, 11 U.S.C. 362, or of a
20 stay order issued by any court of competent jurisdiction,
21 the person making the sale may, as often as he considers
22 expedient, postpone the sale. Each postponement may not
23 exceed 30 days, and all postponements, in the aggregate, may
24 not exceed 120 days. Each postponement must be effected by a
25 public proclamation at the time and place fixed in the

1 notice of sale or fixed by previous postponement. No other
2 notice of the postponed sale need be given.

3 (4) The purchaser at the sale shall pay the price bid
4 in cash, and upon receipt of payment, the trustee shall
5 execute and deliver a trustee's deed to the purchaser. In
6 the event the purchaser refuses to pay the purchase price,
7 the person conducting the sale shall have the right to
8 resell the property at any time to the highest bidder. The
9 party refusing to pay shall be liable for any loss
10 occasioned thereby, and the person making the sale may also,
11 in his discretion, thereafter reject any other bid of such
12 person."

-End-